

## Chang Ngo v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor and other applications

HIGH COURT (MUAR) — CRIMINAL APPLICATION NOS  
44-39 OF 1989, 44-71 OF 1989 AND 44-81 OF 1989  
RICHARD TALALLA JC  
10 MARCH 1989

*Preventive Detention — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Revocation of orders — Fresh orders issued after revocation pursuant to s 11B(2) — Whether minister had power to revoke the orders — Whether minister has power to issue fresh orders under s 11B(2) — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 6(1), 11A(1), B(1), (2) & C(1)*

*Administrative Law — Discretionary powers — Whether minister has power to revoke detention orders — Whether minister has power to issue fresh detention orders upon revocation of previous orders — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 6(1), 11A(1), B(1) & (2)*

The three applicants are detained under detention orders made under s 6(1) read with s 11B of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') and have applied for writs of habeas corpus. As a result of the Supreme Court decision in *Tan Hoon Seng v Minister for Home Affairs, Malaysia & Anor*,<sup>1</sup> which decided that it is not permissible under s 6(1) of the Act for the minister to specify a different date from the date of the order for the commencement of the detention, the orders affecting the applicants in this case were rendered defective. The minister then revoked the orders by reference to s 11B(1) and by reference to sub-s (2), he made fresh orders in respect of each of the applicants. Counsel for the applicants sought to impugn the validity of the revocation and the minister's powers under s 11B(2) to make fresh orders.

**Held**, dismissing the applications:

(1) The Supreme Court in *Tan Hoon Seng*<sup>1</sup> had granted the relief sought by the appellants but there was no order declaring the detention orders to be void. The detention orders therefore remained extant; a fortiori the detention orders in this case. The argument that the initial orders were null and void, in the light of the Supreme Court decision, and that the minister therefore had no power to revoke the orders or to issue fresh orders, was rejected.

(2) The minister's power to revoke is available to him if he deems it just or fit to do so and the Act does not fetter the discretion so given. This discretion is not open to question by the court.

(3) The power to revoke should not be construed restrictively for the effect of revocation is to set the subject free.

(4) It is clear from s 11B(1) that the minister may revoke any detention order made under sub-s (1) of s 6. As long as a detention order is extant, the minister has a right to revoke it. The argument that the initial orders must be taken to be invalid and there could be no effective revocation for s 11B(2) to come into operation for the minister to make fresh orders was rejected.

(5) Looking at ss 6(1) and 11A with s 11B(2), it becomes clear that the reference to sub-s (1) in s 11B(2) means sub-s (1) of s 6 or sub-s (1) of s 11A or both. Any fresh order made or fresh

A direction given pursuant to s 11B(2) must be an order or direction of a kind that is allowable under ss 6(1) and 11A(1) respectively.

(6) The investigation and report submitted under s 6(1) and the inquiry and its report submitted under s 6(1)(b) of the initial orders remain intact and valid. This is because s 11B(2) provides that the revocation shall not affect the validity of the order or direction before its revocation or to anything done thereunder. The fresh orders, therefore, need not be preceded by a fresh police investigation or police inquiry as required under s 6(1).

(7) It would be futile to insist on the motions of the investigation and inquiry in each case being repeated simply because the resulting detention order was technically defective.

C

### Cases referred to

- 1 *Tan Hoon Seng v Minister for Home Affairs, Malaysia & Anor and another appeal* [1990] 1 MLJ 171 (refd)
- 2 *Chng Suan Tze v Minister of Home Affairs & Ors* [1989] 1 MLJ 69 (refd)
- 3 *Poh Chin Kay v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* (Ipoh High Court Criminal Application No 44 (54) 37-89) (unreported) (folld)
- 4 *Zakaria bin Jaafar v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors and another application* [1989] 3 MLJ 316 (refd)
- 5 *Ram Krishan v State of Delhi* AIR 1953 SC 318 (refd)
- 6 *Koh Yoke Koon v Minister for Home Affairs, Malaysia & Anor* [1988] 1 MLJ 45 (refd)
- 7 *Hong Siew Sin v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1990] 2 MLJ 90 (refd)
- 8 *Gladstone v Bower* [1960] 3 All ER 353 (refd)
- 9 *Guardians of the Poor of the Parish of Bristol v Bristol Waterworks Co* [1914] AC 379 (refd)
- 10 *Government of Malaysia v Mohamed Amin bin Hassan* [1986] 1 MLJ 224 (refd)
- 11 *PP v Lau Kee Hoo* [1983] 1 MLJ 157 (refd)
- 12 *Datuk Haji Harun bin Haji Idris v PP* [1977] 2 MLJ 165 (refd)
- 13 *Mai v Inspector-General of Police, Malaysia & Anor* [1974] 1 MLJ 131 (folld)
- 14 *Godavari v State of Maharashtra* AIR 1964 SC 1128 (folld)

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### Legislation referred to

- Dangerous Drugs (Special Preventive Measures) Act 1985  
ss 6(1), 11A(1), B(1), (2), C(1)  
Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1)  
Evidence Act 1950 s 114 illus (e)  
Federal Constitution arts 5(2), 8  
H Internal Security Act 1960 s 8(1)

*Tan Hock Chuan* for the applicant in Criminal Application No 44-39-89.

*Gooi Hock Seng* for the applicants in Criminal Application Nos 44-71-89 and 44-81-89

*Noorbahri bin Baharuddin* (Federal Counsel) for the respondents.

I

*Cur Adv Vult*

**Richard Talalla JC:** These three matters were heard together on the application of both counsel because they raised common questions of law. Counsel addressed me conjointly on behalf of all three applicants.

The three applicants are currently detained at the Pusat Pemulihan Akhlak, Muar, Johore Darul Takzim pursuant to respective orders made under s 6(1) as read with s 11B of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') and have applied under s 365 of the Criminal Procedure Code (FMS Cap 6) for an order that a writ of habeas corpus do issue directing the respondents to produce the applicants before this court and effectively to show cause why they should not be set at liberty.

Relevant to these matters are arts 5(2) and 8 of the Federal Constitution and ss 6(1), 11A(1), 11B(1) and (2) and 11C(1) of the Act. They are as follows:

#### Art 5(2)

Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

#### Art 8

(1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorized by this Constitution there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

(3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.

(4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.

(5) This Article does not invalidate or prohibit:

- (a) any provision regulating personal law;
- (b) any provision or practice restricting office or employment connected with the affairs of any religion, or of any institution managed by a group professing any religion, to persons professing that religion;
- (c) any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the preservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;
- (d) any provision prescribing residence in a State or part of a State as a qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election;
- (e) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day;
- (f) any provision restricting enlistment in the Malay Regiment to Malays.

#### A Section 6(1):

Whenever the Minister, after considering:

- (a) the complete report of investigation submitted under subsection (3) of section 3; and
- (b) the report of the Inquiry Officer submitted under subsection (4) of section 5,

#### B

is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a 'detention order') direct that such person be detained for a period not exceeding two years from the date of such order.

#### C

##### Section 11A(1):

The Minister may at any time before the expiration of the duration of:

#### D

- (a) a detention order made under sub-section (1) of section 6;
- (b) a restriction order made under sub-section (3) of section 6; or
- (c) a detention order suspended under subsection (1) of section 7 (hereinafter referred to as a 'suspended detention order'),

direct that the duration of the order be extended for such further period, not exceeding two years, as he may specify, commencing immediately upon the expiration of its then current duration, and where the Minister so directs he shall set out in the direction the grounds for the extension and state whether such grounds are:

#### E

- (aa) the same as the grounds on which the order was originally made;
- (bb) different from the grounds on which the order was originally made; or
- (cc) partly the same grounds and partly different grounds.

#### F

##### Section 11B(1):

Notwithstanding anything contained in this Act, the Minister may at any time revoke any detention order made under subsection (1) of section 6, or any restriction order made under subsection (3) of section 6, or any suspended detention order, or any direction under subsection (1) of section 11A for the extension of the duration of any such order, if he deems it just or fit to do so.

#### G

##### Section 11B(2):

Any revocation under subsection (1) shall be without prejudice to the validity of the order or direction before its revocation or to anything done thereunder, or to the power of the Minister to make a fresh order or to give a fresh direction as is mentioned under subsection (1) in respect of the person against whom the order or direction which is revoked was made or given.

#### H

##### Section 11C(1):

There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

#### I

In Supreme Court Criminal Appeal No 05-51-89 *Tan Hoon Seng v Minister for Home Affairs, Malaysia & Anor*

and Supreme Court Criminal Appeal No 05-53-89 *Ng King Chew v Minister for Home Affairs & Anor* (which appeals were heard and decided together [see *Tan Hoon Seng v Minister for Home Affairs, Malaysia & Anor and another appeal*]), the appellants were detained separately pursuant to orders under s 6(1) of the Act. The respective orders were signed by the Deputy Minister for Home Affairs. Although made separately they were dated and signed the same day, 8 January 1987. Both orders bore the words 'ditahan selama dua tahun mulai dari 11 Januari 1987 di Pusat Pemulihan Akhlak, Pulau Jerejak, Pulau Pinang'. Thus although the orders were dated and signed on 8 January 1987, it was expressly stated therein that the detention was to take effect from 11 January 1987 in each case. It was unanimously held by the Supreme Court as follows:

It is not permissible under s 6(1) of the Act for the minister to specify a different date from the date of the order for the commencement of the detention unlike in the case of the previous two legislations where the minister may from the language of the relevant provisions direct that a person be detained for a period not exceeding two years from a date as may be specified by the minister.

In other words the words 'from the date of such order' in s 6(1) of the Act must mean what they say, that is from the date that the order is made and signed.

In the case of the present applicants, same orders, mutatis mutandis in respect of names and dates, were respectively made as in the case of the two appellants in the Supreme Court. These orders were made before the Supreme Court decision. They were rendered defective as a result of that decision. Accordingly the minister sought to remedy the situation. He did this by reference to s 11B(1) of the Act whereby he revoked the orders. Then by reference to sub-s (2) of that section he made fresh orders in respect of each of the applicants.

It was argued on behalf of the applicants that the initial orders against the applicants, in the light of the Supreme Court decision, must be taken to be null and void. That being the case, it was submitted, the minister had no power under the Act to revoke the orders (indeed there was nothing to revoke) nor to issue the fresh orders. Inasmuch as the minister, so it was claimed, could not revoke and issue fresh orders and the initial orders were ruled to be null and void, the applicants were then subject to no order at all. Consequently, it was contended, their detention is unlawful and therefore they are entitled to have the orders which they are now seeking. I disagree. The Supreme Court simply stated that it is not permissible for the minister to specify a different date from the date of the order. It then directed that a writ of habeas corpus do issue. There was no order declaring the detention orders to be void. Such an order was not sought. Thus the detention orders remained extant; a fortiori the detention orders in the present cases. Of course they were

A defective. The fact remains that as long as they remained on foot they were valid.

It was next submitted that the Act should be construed strictly in as much as it provides for the deprivation of the liberty of the subject without trial. It was urged on me that s 11B(1) should be read with s 6(1) of the Act and just as in making an order under s 6(1), the minister must be satisfied that it is necessary in the interest of public order that a specific person be detained, so in exercising his discretion to revoke such order the minister must necessarily be satisfied that it is no more necessary in the interest of public order that that person should continue to be detained. Any other interpretation, so it was contended, would in effect mean that the minister has unlimited power under s 11B(1) to revoke. Counsel cited the case of *Chng Suan Tze v Minister of Home Affairs & Ors*<sup>2</sup> where Wee Chong Jin CJ said at p 82:

D In our view, the notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power.

Counsel also referred to a passage in *Maxwell on the Interpretation of Statutes* (12th Ed) at p 137 which reads as follows:

E To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined: quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.

F As I see it the minister's power to revoke is available to him if he deems it just or fit to do so and there is nothing in the Act which fetters the discretion so given to him. In any event it is not open to me to question his discretion. See s 11C(1) above-stated. Furthermore, given that the Act should be construed strictly, strictly in favour of the subject as against the authority that detains the subject, the power to revoke a detention order should not be construed restrictively for the effect of revocation is to set the subject free.

H The next complaint was that the action of the minister in revoking the old order and issuing a fresh one was manifestly to circumvent the Supreme Court decision the effect of which was to render the old orders defective. It was submitted that this is not right. Again Maxwell's book was relied on and the following are extracts from pp 147-148 and 251:

I At pp 147-148:

Even though an act done is ostensibly in execution of a statutory power and within its letter, it will nevertheless be held not to come within the power if done otherwise than honestly and within the spirit of the enactment. A discretion is to be 'regulated according to known rules of law', and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet.

At p 251:

Statutes which encroach on the rights of the subject, whether as regards person or property, are subject to a strict construction in the same way as Penal Acts. It is a recognized rule that they should be interpreted, if possible, so as to respect such rights, and if there is any ambiguity the construction which is in favour of the freedom of the individual should be adopted.

As I see it, the orders before the Supreme Court were found to be defective because of a technical defect and nothing more. What the minister did in the event was to remedy the situation. I cannot find anything pointing to the minister having a sinister motive in doing what he did. He was not circumventing the Supreme Court decision. Rather he was acknowledging its correctness as indeed he was bound to.

In respect of sub-s (2) of s 11B, it was argued that it had to be presupposed by reference to the words 'without prejudice to the validity of the order' that only a valid order can be revoked and that inasmuch as the initial orders must be taken to be invalid there could be no effective revocation for s 11B(2) to come into operation and for the minister to make a fresh order. In this regard counsel referred to the decision of Ong See Seng JC in *Poh Chin Kay v Menteri Dalam Negeri, Malaysia & Anor.*<sup>3</sup> There the learned Judicial Commissioner opined that the minister is empowered to revoke any detention order and that the provisions of s 11B(2) read with the provisions of s 11B(1) do not restrict the powers of the minister. It was urged on me that the learned Judicial Commissioner's decision be not followed, that the sections be construed strictly and that any doubt in regard to them should be given in favour of the subject and not the detaining authority. I cannot do so. Section 11B(1) is clear in its terms. It provides, inter alia, that the minister may revoke any detention order made under sub-s (1) of s 6. To my mind any question as to whether an order to be revoked is valid or invalid is beside the point. As long as a detention order is extant the minister has a right to revoke it. To say that the detention orders are invalid because they are defective is a non sequitur. To illustrate the point, I will take the Supreme Court case aforesaid. Upon the return of the writ of habeas corpus it could be argued, how effectively I do not know, that the detention orders notwithstanding their defect should be held to be valid. See the Supreme Court case.<sup>1</sup>

The next argument was one throwing doubt as to whether the revocation orders came into effect before or after the fresh orders. If the revocation orders became effective after the fresh orders, then there would have been two orders running at the same time in respect of each applicant. It was contended that it is trite law that there cannot be two detention orders operating at the same time. Reliance was placed on the case of *Zakaria bin Jaafar v Menteri Hal Ehwal Dalam Negeri, Malaysia &*

A *Ors and another application*<sup>4</sup> where it was held at p 317 as follows:

What is in existence, in fact and in law, is one order of detention (made under s 6 of the Act), the duration of which is being extended for the further period of two years in the case of each applicant. ...

B As I said earlier, in law and in fact, there is only one detention order. ...

Section 11A confirms that in reality there is only one detention order, the duration of which can be extended on the same or on fresh grounds, with the additional safeguard of permitting the detained person to make representation against the fresh grounds alleged against him.

C It was further argued that the revocation orders did not provide expressly when they were to come into effect whereas the fresh orders did. It was contended that the court should not assume that the revocation orders were to take effect from the date they were signed and that it was for the detaining authority to make it clear in the orders when they were to take effect and inasmuch as they were both dated the same day, it was doubtful which was to precede the other. In this regard there was cited the case of *Ram Krishan v State of Delhi*<sup>5</sup> where at p 320 it was stated:

E Surely, it is up to the detaining authority to make his meaning clear beyond doubt, without leaving the person detained to his own resource for interpreting the grounds.

Counsel also cited the case of *Koh Yoke Koon v Minister for Home Affairs, Malaysia & Anor.*<sup>6</sup> There it is stated at p 49:

F I would add that any ambiguity in this regard would have to be resolved in favour of the subject since habeas corpus is not a discretionary remedy. I am supported in this by the judgment of Suffian LP in *Andrews s/o Thamboosamy v Supt of Pudu Prisons* [1976] 2 MLJ 156 when he said:

G '... we agree that any form of detention does violence to s 5(1) of the Constitution ... and hence power given by law to detain must be construed *strictly* and in case of *doubt or ambiguity* the court should lean in favour of the subject.' (Emphasis added.)

H Again I do not agree. It was natural and accorded with commonsense for the minister to revoke the defective orders first and then proceed to issue the fresh orders. There was no basis for me to presume otherwise; quite the contrary. Section 114, illus (e) of the Evidence Act 1950 permits the court to presume that official acts have been regularly performed. There was affidavit evidence before me establishing that the order of revocation was served on the first applicant and duly explained to him and that immediately after such service the fresh order was served on him. The fresh order was also explained to this applicant.

I Accordingly, I find in these matters that the acts carried out by the minister and those acting under him were done regularly and in each case the order of revocation preceded the respective fresh order. Even if there was an irregularity in this regard, it would be no more than trifling and I do not consider that invalidity should follow. In *Hong Siew Sin v Menteri Hal Ehwal Dalam Negeri, Malaysia &*

*Anor*,<sup>7</sup> the only issue was whether the orders which extended the detention of the appellants under s 11A of the Act were invalid because the dates referred to therein as the commencement dates coincided with the last dates of the first detention orders. Counsel for the appellants argued that this was an irregularity amounting to double detention. It was clear to the court from the language of that section that the extension order made thereunder had to commence *immediately upon the expiration* of the period of the then current order. The extension orders, as to the period of extension, read as follows: 'selama tempoh dua (2) tahun selanjutnya mulai dari tarikh tamat tempoh Perintah Tahanan itu iaitu dari' followed by a specific date in respect of each appellant. The dates were actually the dates of the expiry of the then current detention orders. The Supreme Court held that taken as a whole the extension orders had in fact substantially complied with s 11A and that the additional words specifying the dates could not be regarded as rendering the extension orders invalid. Hashim Yeop A Sani CJ in delivering the unanimous judgment of the court said:

The learned judge was quite correct in applying the maxim *de minimis non curat lex* (the court should not deal in trivialities). Looking at the problem in another way it is not so much the application of the *de minimis* rule but that the extension orders in question should be read as a whole and the words specifying the dates referred to earlier should be ignored either as a genuine mistake or a miscalculation of the dates or a trifling irregularity or simply superfluous — see also *Greene v Secretary of State for Home Affairs* [1941] AC 284 at pp 298-300.

It was argued that there was no valid power for the minister to issue fresh orders in the circumstances of these cases, that the orders must be taken to have been issued not in isolation but by reference to s 11B read as a whole, that sub-s (2) thereof contains the words 'as is mentioned in sub-s (1)' but when looking at sub-s (1) of 11B no words are found therein empowering the minister to make a fresh order or give a fresh direction. It was argued that clearly there was an omission in sub-s (1). It was said that the second limb of sub-s (2) is controlled by sub-s (1), that the omission was a blunder by the draftsman. Given the blunder, it was contended that the court should not rely on normal rules of interpretation to fill the gap, that the Act should go to Parliament to be amended, that the role of the court is to interpret and not to make or correct the law and that to do otherwise was to usurp the power of Parliament. In this regard dicta in the three following cases were cited. *Gladstone v Bower*<sup>8</sup> at p 358:

I think, therefore, that this is simply *casus omissus* and the Act is defective. If it were ever permissible for the court to repair a defective Act of Parliament, I should be very glad that the court should do so in this case so far as the court could. The court will always allow the intention of a statute to override the defects of wording but the court's ability to do so is limited by the recognized canons of interpretation. The court may, for example, prefer an alternative construction

which is less well fitted to the words but better fitted to the intention of the Act. But here for the reason given by the learned judge there is no alternative construction; it is simply a case of something being overlooked. We cannot legislate for *casus omissus*. I may be sure in this case that I know exactly what Parliament would do if it perceived a gap. But, if the rule were to be relaxed, sooner or later the court would be saying what Parliament meant and might get it wrong and thus usurp the law-making function. It is a matter of keeping within the recognized canons and they do not permit the court to supply words if the only (and I emphasize only) ground for their admission is to give legislative efficacy to a statute.

*Guardians of the Poor of the Parish of Bristol v Bristol Waterworks Co*<sup>9</sup> at p 388:

Now it is one thing to introduce terms into an Act of Parliament in order to give effect to its clear intention by remedying mere defects of language. It is quite another thing to imply a provision which is not in the statute in order to remedy an omission, without any ground for thinking that you are carrying out what Parliament intended. I ask myself, did Parliament intend that the payment or tender should be a reasonable sum to be fixed if need be by the courts? For what the justices are to determine is only the value of the tenement, not the rate or amount to be paid. I have no ground for believing that Parliament meant this curious method. I do not believe it did, and to insert such a provision would be simply making, not interpreting, the law. After all, it is not our function to repair the blunders that are to be found in legislation. They must be corrected by the legislature.

*Government of Malaysia v Mohamed Amin bin Hassan*<sup>10</sup> at p 228:

In the matter of construction it is well to remember that in *Magor & St Mellons Rural District Council v Newport Corporation* [1952] AC 189 the House of Lords has laid down clearly that in construing a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed. To do so would be to usurp the function of the legislature. In that case Lord Simonds made this important observation:

'The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited ...'

As to the complaint of blunder in the drafting of sub-s (2) of s 11B resulting in its provisions being allegedly meaningless, again I have to disagree. The following paragraphs in 44 *Halsbury's Laws of England* (4th Ed) are relevant:

856 Ascertaining the intention of Parliament. The object of all interpretation of a written instrument is to discover the intention of the author as expressed in the instrument. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. This intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of Parliament.

860 Statutes must be so construed as to make them operative. If it is possible, the words of a statute must be construed so as to give them a sensible meaning. A statute must, if possible, be construed in the sense which makes it operative and does not defeat the manifest intentions of the legislature, and nothing short of impossibility so to construe it should allow a court to declare a statute unworkable. Thus where a statute has some meaning, even if it is obscure, or several meanings, even though there is little to choose between them, the court must decide what meaning the statute is to bear, rather than reject it as a nullity. It is not permissible to treat a statutory provision as void for mere uncertainty; however, if the uncertainty cannot be resolved, and the provision can be given no sensible or ascertainable meaning it must be regarded as meaningless.

Where the main object and intention of a statute are clear, it should not be reduced to a nullity by a literal following of language, which may be due to want of skill or knowledge on the part of a draftsman, unless such language is intractable.

With these paragraphs in mind, the provisions of s 11B(2) must be looked at again, in particular the words 'the power of the minister to make a fresh order or to give a fresh direction as is mentioned under sub-s (1)'. It is not stated to which section of the Act the subsection relates. It is natural then to turn to sub-s (1) of the section itself, that is to say s 11B. This is done and it is observed that there is no mention therein of the power of the minister to make a fresh order or to give a fresh direction. Does the court then with blinkered eyes conclude that sub-s (2) of s 11 is nonsense and lay blame at the door of the draftsman? I do not think so. Subsection (1) of s 11B speaks to sub-s (1) of s 6. It also makes reference to sub-s (1) of s 11A. In the search for a sensible meaning to s 11B(2), sub-s (1) of ss 6 and 11A are looked at. These sections speak to the power of the minister to order and direct the detention of a person. Section 11B(2) is studied again. Now its meaning emerges. Quite clearly the reference to sub-s (1) therein means sub-s (1) of s 6 or sub-s (1) of s 11A or both. Thus the pieces of ss 6, 11A and 11B, as I see it here, fall into place and any fresh order made or fresh direction given pursuant to the provisions of s 11B(2) must be an order or direction of a kind that is allowable under ss 6(1) and 11A(1) respectively.

It was argued further that fresh orders had not been issued in accordance with the provisions of the Act, the reason being that no fresh police investigation nor further inquiry by the inquiry officer was carried out. It was contended that the revocation amounted to cancellation, to annulment. 'Everything cancelled and gone', said counsel and the fresh orders amounted to new detention orders requiring fresh investigation and inquiry, the more so because, so it was argued, there is only one type of order and that is an order under s 6(1), that s 6(1) demands as a prerequisite investigation and inquiry and report of the same. In these cases, so it was argued, there was no fresh investigation or inquiry, the minister relied on the old ones. A comparison was made by counsel with other

A legislation providing for detention without trial, namely, s 8(1) of the Internal Security Act 1960 which reads:

If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that person be detained for any period not exceeding two years.

And s 4(1) of the Emergency (Public Order And Prevention of Crime) Ordinance 1969 which says:

If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order (hereinafter referred to as a 'detention order') directing that that person be detained for any period not exceeding two years.

D In both of these there was no requirement for investigation and inquiry as required in the Act under consideration. Thus, it was argued, by reason of this special prerequisite a fresh order coming out of s 11B(2) must do so by reference to s 6(1) and therefore only after investigation and inquiry has been carried out.

E Article 8 of the Constitution was invoked in this regard. It was said that non-compliance with the section offends against the article which provides for equal protection of the law. It was said therefore that some detainees would have the advantage of investigation and inquiry and others would not. In this regard counsel cited the case of *PP v Lau Kee Hoo*<sup>10</sup> at p 162:

Equality before the law and equal protection of the law require that like should be compared with like. What our art 8(1) assures to the individual is the right to equal treatment with other individuals in similar circumstances. It prohibits laws which require that some individuals within a single class should be treated by way of punishment more harshly than others.

G The case of *Datuk Haji Harun bin Haji Idris v PP*<sup>12</sup> was also cited. The relevant passage is at p 165 and is as follows:

The prohibition of unequal treatment applies not only to the legislature but also to the executive — this is seen from the use of the words 'public authority' in cl (4) and 'practice' in cl (5)(b) of art 8.

H Again I have to disagree. As I see it sub-s (2) is clear in its terms. Given the discretion of the minister to revoke a detention order made under s 6(1), sub-s (2) of s 11B says that the revocation shall not affect the validity of the order or direction before its revocation or to anything done thereunder. Thus the investigation and its report submitted under s 6(1)(a) and the inquiry and its report submitted under s 6(1)(b) will remain intact and valid. In any event in the present cases it would be futile to insist on the motions of the investigation and the inquiry in each case being repeated simply because the resulting detention order was technically defective. In this regard see the case

of *Mat v Inspector-General of Police, Malaysia & Anor*<sup>13</sup> in which the then Federal Court adopted the dictum of Wancho J in *Godavari v State of Maharashtra*.<sup>14</sup> In that case a person was detained by an order of the Police Commissioner. The order was sent to the state government for approval as required by the Preventive Detention Act. The state government revoked the order of the Police Commissioner and on the same day passed an order under r 30 of the Defence of India Rules. The latter order was served on the detainee in gaol. The legality of the order was challenged on the ground that it was served while the detainee was in gaol. The Supreme Court held that the order was legal. Wancho J (as he then was) delivering the judgment of the court at p 1132 said:

In these circumstances it would be in our opinion an empty formality to allow the appellants to go out of jail on the revocation of the order (made by the Commissioner) and to serve them with the order (made by the state government) as soon as they were out of jail.

For the reasons above-stated I cannot find for the applicants. Accordingly the applications are dismissed.

*Applications dismissed.*

Solicitors: *Kam Woon Wah & Co; Shan & Gooi.*

Reported by *Zarinah Marican*

## Wong Ah Kau v Menteri Hal Ehwal Dalam Negeri & Anor and other applications

HIGH COURT (PENANG) — CRIMINAL APPLICATION  
NOS 44-69-89, 44-75-89, 44-2-90, 44-8-90 AND 44-5-90  
MOHAMED DZAIDIN J  
7 MARCH 1990

*Preventive Detention — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Fresh order — Whether minister has power to make fresh order after revocation order is made under s 11B(1) — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 6(1), 11B(1) & (2)*

The applicant was detained under a detention order made under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') for a period of two years commencing from 5 June 1987. On the expiry of this order, the applicant was detained for another two years under s 11(A)(1). The extension order would have expired on 3 June 1991, but on 15 January 1990, the deputy minister revoked this order in the exercise of his powers under s 11B and simultaneously issued a fresh detention order under s 6(1) directing that he be detained for six months.

The applicant argued, *inter alia*, that the minister has no power to issue a fresh s 6(1) order read together with s 11B of the Act.

**Held**, allowing the application:

(1) Section 11B(1) of the Act gives the minister the power to revoke any detention order made under s 6(1) at any time if he

deems it just or fit to do so. Under s 11B(2), any revocation under sub-s (1) shall be without prejudice to the power of the minister to make a fresh order or to give a fresh direction under sub-s (1).

(2) However, sub-s (1) is silent about the power of the minister to make a fresh order or to give a fresh direction. There is a clear omission in sub-s (1) to provide for such a power of the minister as spelt out in sub-s (2). There are no other sections in the Act which gives power to the minister to make a fresh order under s 11A(1).

(3) Even taking sub-ss (1) and (2) together, sub-s (2) cannot be interpreted to fill in the omission regarding the power of the minister in sub-s (1). Only Parliament can remedy this omission, and the court cannot fill in any gap in order to give effect to the intention of the statute.

(4) The minister therefore has no power to issue a fresh order of detention once a revocation order under s 11B(1) is made.

### Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985  
ss 6(1), 11B(1), (2)

*Gooi Hock Seng (M Athimulan and Tan Hock Chuan with him)*  
for the applicants.

*Balia Yusof (Senior Federal Counsel)* for the respondents.

*Cur Adv Vult*

**E Mohamed Dzaidin J:** These are five applications for writs of habeas corpus which are taken up in argument together under Criminal Application No 44-5-90 because they are based on the same and common grounds. Accordingly, the parties agreed to be bound by my decision in Criminal Application No 44-5-90.

**F** The brief facts in this application are these. The applicant was first detained under the detention order made in pursuance of s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') signed and issued by the Timbalan Menteri Dalam Negeri on 4 June 1987 ordering his detention for a period of two years to commence from 5 June 1987. On the expiry of this order, the applicant was ordered to be detained for a further period of two years, which detention was made under s 11(A)(1). The said order was signed on 3 June 1989 directing his detention to run from 4 June 1989. Thus, in the normal course of events the extension order will not expire until 3 June 1991. In the meantime, on 15 January 1990, the deputy minister, in the exercise of his powers under s 11B, revoked this extension order and simultaneously issued a fresh detention order under s 6(1) against the applicant directing that he be detained for a period of six months. Now, to complete the facts, it is expedient for me to state here that according to Datuk Megat Junid (see his affidavit in lampiran 11), he was satisfied that a fresh order should be issued against the applicant and that before issuing the said order he applied his mind to the facts and the information relating to the applicant's case. He also took into consideration the applicant's conduct and the activities submitted by the police as well as the